

CALIFORNIA COASTAL COMMISSION

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Staff: PE-LB

Staff Report: 10/25/01

Hearing Date: 11/13-17/01

Commission Action:

GRAY DAVIS, Governor



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STAFF REPORT: MATERIAL AMENDMENT

APPLICATION NUMBER: 5-98-164A

APPLICANT: Playa Capital Co. LLC

AGENT: Catherine Tyrrell
Wayne Smith

PROJECT LOCATION: Area C, south of Culver Boulevard, Playa Vista, City of Los Angeles

UNDERLYING PROJECT Archaeological inventory and evaluation of five separate sites. The investigation will involve mechanical and manual excavations for minor coring, trenching and backfilling to restore sites.

PROJECT DESCRIPTION 5-98-164A1: Archaeological recovery and exploration of portions of LAN 54 that lie under proposed road-widening work. The site is approximately 34,425 square feet. The recovery program includes five phases of excavation: (1) mechanical stripping of fill; (2) mechanical excavation of trenches, (3) manual excavation of control units into cultural deposits, (4) mechanical stripping and screening of soils to locate features, and, if features are discovered, (5) manual excavation of features. Site is located more than 500 feet outside of all areas identified as wetlands or as potential wetlands. If the entire site below the fill contains cultural deposits **and** if entire site is excavated, a maximum of 7,650 c.y. would be excavated. Location of cultural deposits is confidential under Calif. Govt. Code §5097 and Public Resources Code §7050.5. At completion of the exploration, treatment and analysis authorized under the programmatic agreement, cultural artifacts will be curated at a museum that complies with federal standards and is approved by the State Historic Preservation Officer (SHPO.) The excavated site will be backfilled and will be under a road which the applicant is proposing separately.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the project with conditions that (1) the approval is contingent upon the approval of and issuance of permits A-5-PLV-00-417 and 5-01 382 Culver Boulevard road widening; (2) that the applicant post 24-hour security guards and provide public information signage, (3) that the applicant employ Best Management Practices to prevent siltation during the work, and (4) the applicant shall mark and avoid areas in which the rare southern tarplant *Centromadia parryi* ssp *australis* is found.

APPROVALS RECEIVED:

1. City of Los Angeles First Phase Playa Vista EIR Mitigation Measures
2. US Army Corps of Engineers /State Historic Preservation Officer: Programmatic Agreement Among the U.S. Army Corps of Engineers, Los Angeles District, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer, regarding implementation of the Playa Vista Project, 1991.
3. Richard Thompson, ACOE, Letter: Extension of Programmatic Agreement, October 11, 2001.
4. Dr. Knox Mellon, State Historic Preservation Officer, Letter, "Playa Vista Archaeological and Historical project, Los Angeles County California, to Mr. Richard J Schubel, Ph.D., Chief, Regulatory branch, United States Army Corps of Engineers, Los Angeles, February 15, 2001.
5. Altschul, Jeffrey H. and Vargas, Benjamin R. On Ballona Creek, Archaeological Treatment Plan for CA-LAN-54, Marina del Rey, California, January 2, 2001
6. City of Los Angeles, Approval in Concept ZA 2001-1664.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles, Playa Vista, Phase I EIR
2. City of Los Angeles, Playa Vista Certified LUP, 1987
3. Richard Ciolek-Torrello, Don R Grenda, Jeffrey H. Altschul, Work plan for Archaeological Inventory and Evaluation of the 49104-01 Tract Map, Freshwater Marsh, and Associated Features, Statistical Research, Inc., January 8, 1998.
4. 5-98-164 (Playa Capital, LLC. ***Note: parts of file 5-98-164 and 5-98-164A are confidential under Government Code Section 5097:***

I. STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

MOTION: ***I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-98-164 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This amendment does not affect the conditions imposed in the Commission's previous actions and those conditions remain in effect unless modified by the conditions of this permit amendment.

1. AUTHORIZATION OF WORK ON A-5-PLV-00-417 AND 5-01-382

Prior to issuance of the amendment to the permit the applicant shall provide evidence that coastal development permits A-5-PLV-00-417 and 5-01-382 for widening Culver Boulevard and construction of a loop ramp have been issued.

2. LIMITS OF WORK APPROVED UNDER 5-98-164A

Prior to issuance of the permit the applicant shall supply an approved final grading plan, approved by the Executive Director and the City of Los Angeles Department of Public Works, for the work authorized in coastal development permit 5-01-382 and appeal A-5-PLV-00-417 (Culver Widening Permits) in the area of the project subject to this permit amendment. No work authorized in this permit amendment shall extend more than ten feet outside the area that will be disturbed by the grading authorized by the coastal development permit 5-01-382 and appeal A-5-PLV-00-417 (Culver Widening Permits) without an amendment to this permit.

3. SECURITY

The site shall be fenced. Prior to authorization of the amendment, the applicant shall agree in writing to secure the site to the satisfaction of the Executive Director, to prevent vandalism and theft of cultural artifacts, if and when any deposits are encountered. With concurrence of SHPO, the applicant may provide interpretive signage on the fence to provide information to the public on the history of the area or of the site.

4. SOUTHERN TARPLANT/BIOLOGICAL MONITOR

Prior to issuance of the permit and again before any vegetation is disturbed; a qualified biologist shall survey the site and prepare a report concerning the presence of (1) Southern tarplant *Centromadia parryi* ssp *australis*, (2) nesting birds. If a nesting bird is found within or immediately adjacent to the footprints of the excavation or of the staging areas, the work shall not proceed until the qualified biologist certifies that the chicks have fledged and that the work will not disturb the birds. If the southern tarplant is found within the footprints of excavation or of the staging areas, the work shall not proceed. All reports shall be filed in the Commission office prior to issuance of the permit and again prior to the start of work. The applicant

shall place visible orange plastic 48-inch high temporary fences around the area in which the tarplant has been found and prevent excavation, stockpiling, and the entry of vehicles or storage of equipment in this area. A biological monitor shall remain on site through out the excavation.

5. EROSION AND DRAINAGE CONTROL

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and written approval of the Executive Director, a plan for erosion and drainage control. The erosion and drainage control plan shall include:

A. DELINEATION OF DISTURBED AREAS.

1. The plan shall delineate the areas to be disturbed by excavation and shall include the southern tarplant habitat, any staging areas and stockpile areas, as well as areas to be preserved, such as the portions of the site that will remain capped.
2. Limitation: The tarplant habitat shall be clearly delineated with visible hazard fencing. No grading, stockpiling or equipment storage shall occur within areas where the southern tarplant has been observed (pursuant to Special Condition 4).
3. Pursuant to this condition, areas approved for stockpiling and areas reserved from disturbance shall be mapped and published on plans or diagrams provided to equipment operators and site crew.
4. Prior to issuance of the permit the applicant shall deliver the plans required in this section to the Executive Director for review and approval.

B. EROSION CONTROL DURING EXCAVATION.

1. During excavation, erosion on the site shall be controlled to avoid adverse impacts on wetlands, the southern tarplant, drains and ditches, Ballona Creek and public streets. The following temporary erosion control measures shall be used during construction, and shall be noted on the job-site plans:

- (a) Temporary sediment basins (including debris basins, desilting basins or silt traps),
- (b) Temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover,
- (c) Close and stabilize open trenches as soon as possible.
- (d) Temporary revegetation and weed control. Prior to issuance of the permit, the applicant shall provide the executive director with list of plants and seeds and the sources of such plants and seeds to be

used in stabilizing the site if that becomes necessary due to job interruption. Plants and seeds used in temporary revegetation shall consist of native plants common to the Ballona wetlands area, including the coastal sage scrub and dune plants now found in Area C. The planting mix shall not include introduced annual grasses or "wildflower mix."

- (e) These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume. Monitoring shall include weekly inspection for invasive non native plants such as pampas grass, fennel, mustard, chrysanthemum, iceplant, myoporum and castor bean, and timely removal of such plants.

2. The plan shall include, at a minimum, the following components:

- (a) A narrative report describing all temporary run-off and erosion control measures to be used during construction and all permanent erosion control measures to be installed.
- (b) A site plan showing the location of all temporary erosion control measures.
- (c) A schedule for installation and removal of the temporary erosion control measures.
- (d) A written review and approval of all erosion and drainage control measures by the applicant's engineer and/or geologist:

C. RESTORATION AND MONITORING OF DISTURBED AREA AFTER COMPLETION OF ARCHAEOLOGICAL WORK

- (a) After completion of the project, and until the area has been again disturbed by construction of the road improvements authorized in 5-01-382 and or A-5-PLV-00-417, the applicant shall monitor all areas disturbed by the project and immediately around them monthly for the emergence of the invasive plant species noted above, and remove such plants as they emerge. No chemical methods shall be employed other than hand application of non-persistent herbicides approved by the executive director, unless an amendment to this permit is issued.

D. COMPLIANCE. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no

amendment is required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The project is located at LAN 54, a registered archaeological site that will be disturbed by the work of widening Culver Boulevard. In separate applications, 5-01-382 and A-5-PLV-00-417, the same applicant, Playa Capital, has applied to widen Culver Boulevard by 27 feet and to construct ramps connecting Culver Boulevard to Lincoln Boulevard, and to Route 90, the Marina Freeway, on the east end of Area C. If those related permit requests are approved and work commences, part of the widened road and associated work will encroach onto the registered archaeological site LAN 54. The exact location of the site cannot be disclosed under State law.

Under the underlying permit 5-98-164, the applicant undertook initial exploration of five previously identified sites on Playa Vista. The consulting archaeologist determined that this site has valuable deposits. The State Historic Preservation Officer concurred that the site is important and should be recommended for registration in the National Registry of Historic Places. The underlying permit requires that if cultural deposits are discovered, the applicant would return to the Executive Director, who would determine whether an amendment would be required. In this case, the Executive Director determined that the amendment is material because the grading required will be extensive, as much as 7,650 cubic yards.

Condition 3 of the underlying permit requires:

3. Review of Treatment Plan

In the event that cultural resources are discovered and a Treatment Plan (mitigation plan) is prepared, the Treatment Plan shall be submitted to the Executive Director for review and approval. Based on the mitigation procedures outlined in the Treatment Plan the Executive Director will determine if an amendment to this permit is required.

B. HISTORIC AND CULTURAL RESOURCES.

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

This site is one of five archaeological sites in the coastal zone that the Commission allowed the applicant to explore in permit 5-98-164. The applicant provided the Commission with a Programmatic Agreement approved by the United States Army Corps of Engineers and the State Historic Preservation Officer (SHPO) which was drafted in consultation with local Native American organizations. In approving the permit, the Commission referred to its statewide guidelines addressing archeological and paleontological resources and Coastal Act Section 30244. In approving 5-98-164, the Commission approved only the development necessary to carry out initial archaeological assessment plan. (Exhibit 4).

State law sets out protocols for archaeological exploration. The exact location of the site is not permitted to be divulged. This site has been discovered in the past by amateur collectors and may have been seriously depleted. A significant concern about archeological sites is that they attract unauthorized collectors, who can damage the site, and who in excavating “finds” out of context, and failing to keep records, identify or analyze subtle “non-collectible” information, and prevent the use of the site for interpreting the past. Authorized excavations take place in the presence of a Native American monitor, who is empowered to stop the work if remains are found. Unsupervised excavations do not allow participation by monitors.

An additional problem with confidentiality in this case is that Area C is already intermittently used by the public. After the discussions about the use of this land as a public park began (see access discussion below), the public has been visiting the site in appreciable numbers. For that reason, the Commission requires that the site be guarded and secured from vandalism. While State Law requires that the existence and location of the site must be kept confidential, it may be too late or impractical given public interest in the area. It may also be wise to acknowledge the public's interest and (1) guard against vandalism and also (2) provide information about what is known about the site and the history of the area. For that reason the Commission encourages placement of informational placards on the fence, if approved by SHPO, to provide such information

Both the Coastal Act and the City's certified Land Use Plan require mitigation measures for development areas that contain significant cultural resources. The proposed project is intended to provide such mitigation measures. The Commission's Statewide Interpretive Guidelines also provide guidance for archaeological excavations and for preferable mitigation measures. These measures range from complete avoidance of the site to a full-scale excavation and analysis of the archaeological materials. In this case, the exploration of the site may not take place until the Commission approves development that requires the mitigation and the staff issues the permit.

The Guidelines recommend a three-step process to develop an appropriate archaeological mitigation program. The first step includes archaeological reconnaissance, which typically is designed to locate archaeological sites based on a literature review/archival search and possibly a surface reconnaissance. This step has been completed for all the subject

archaeological sites. After the reconnaissance, the applicant, the Corps and SHPO entered into a programmatic agreement in 1991. The 1991 Programmatic Agreement was reviewed and signed by Vera Rocha, Tribal Chairman of the Coastal Gabrieliños, Manuel Rocha, spiritual leader and Cindi Alvitre, Chairperson Tribal Council Gabrieliño/Tongva. The 1991 Programmatic agreement was extended on October 4, 2001 by the Corps, which notified the same groups of the extension.

The second step includes testing and determination of significance. The applicant has completed subsurface testing for all sites identified in the underlying permit and by the programmatic agreement. A site's significance is determined on the basis of site integrity, research potential, ethnic and historical value and the potential for public appreciation. The third step requires the preparation of a Mitigation Plan (Treatment Plan), taking into consideration the information obtained in steps one and two. The applicant has prepared a Treatment Plan for this site, which includes:

- 1) Mechanically stripping 3 feet of fill from those portions of the site that will be disturbed by the road [development approved under 5-01-382/A5-PLV-00-417. The above cited road project], under supervision by a registered archaeologist and by a Native American monitor.
- 2) Screening material removed by that process.
- 3) Mechanical excavation of trenches.
- 4) Hand exploration of identified "control units" methodically distributed on the site;
- 5) Mechanical stripping and screening of soils to locate features;
- 6) If features are found, manual excavation of features.
- 7) Cataloging and curating what is found.
- 8) Leaving the portion of the site that will not be under the road or utilities capped with fill. (Recovery Plan LAN 54, 2001)

As with other sites, if human remains are found, the County Coroner is notified. If the Coroner identifies the remains as Native American, the Native American Heritage Commission is contacted. The Native American Heritage Commission identifies a most likely descendant who determines what to do with the remains. This may include re-interment in an area that is not likely to be disturbed in the future.

Included in the Statewide Guidelines is the requirement that such work be conducted by a qualified professional. Members of the Society of Professional Archaeologists (SOPA) are considered to meet these qualifications. Mr. Jeffrey H. Altschul, a member of the Society of Professional Archaeologists, will lead the proposed project.

The Guidelines also recommend that archaeological work involving excavation of more than two meters of surface area provide a written research design. The research design should be an explicit statement of research objectives and a program for carrying out these objectives. Since this site has been determined to contain significant cultural resources, the

consultant has prepared a detailed Treatment Plan (Mitigation Plan) which appropriate Federal and State reviewing agencies have approved and which the consultant also provided to interested Native American groups.

After review of the Treatment Plan, the Executive Director, has determined an amendment is required because there is significant additional excavation required, there is a significant change in area of disturbance, and because of the stripping of fill, there is a change in the type of excavation procedures. The proposed Treatment Plan contains specific theoretical problems, working hypotheses and a statement of the data required to confirm or reject the hypotheses. The proposed Treatment Plan also includes detailed field and laboratory methods. The proposed Treatment Plan conforms with the Programmatic Agreement among the Corps of Engineers, the Advisory Council on Historic Preservation and the State Office of Historic Preservation and has been reviewed by those agencies.

To assure that the proposed project remains sensitive to the concerns of the affected Native American groups, a Native American monitor should be present at the site during all excavation activities to monitor the work. The monitor should meet the qualifications set forth in the NAHC's guidelines. As a condition of approval of the underlying permit, an on-site Native American monitor that meets the qualifications of the NAHC's guidelines shall also be required during excavation activities under this permit amendment.

The Commission's Archaeological Guidelines also recommend that the research design or Treatment Plan include arrangements for curation of collections when appropriate, and dissemination of the research findings. The proposed Treatment Plan states that all project related notes, records, photographs, and sorted materials (except those repatriated under California State Burial Law) will be curated at a repository meeting federal standards and in accordance with 36 CFR 79. When the underlying permit was approved the applicant's archaeologist indicated that it was too early to identify a repository. The applicant's archaeologist indicated then that the most likely repository would be the San Bernardino County Museum. The San Bernardino County Museum meets Federal and State guidelines for curation of archaeological collections.

There must be some assurance that the collection and related field records, catalogs and reports will be properly curated. Without proper curation, there is no assurance that the value of information obtained will be retained in perpetuity. A qualified curation facility is one that meets the State Historic Preservation Office (SHPO) guidelines, and federal standards, such as the mentioned San Bernardino County Museum. However, there is no guarantee that the facility will be able to accept the collections once the artifacts are ready for curation. Consequently, if another facility is available that meets SHPO's guidelines it would also be consistent with the permit conditions and with state and federal law to allow curation to occur there. In any case, curation of any significant artifacts must be assured in order to find that the proposed project meets Section 30244 of the Coastal Act's requirement for reasonable mitigation.

Therefore, as a condition of approval of the underlying permit the Commission required that the applicant shall identify a curation facility before completion of archaeological work, and artifacts of significant cultural value collected as a result of this project at the archaeological sites shall be curated at a qualified curation facility (Exhibit 2, page 7). The applicant states that the process of exploration recovery and analysis at Playa Vista is expected to last another five years. At the end of that time the applicant will identify qualified facility, and the applicant will then provide evidence of the institution's agreement to accept the collection and its qualifications, to the Executive Director. In Los Angeles, Santa Barbara and San Bernardino Counties there are four qualified facilities which include: the Santa Barbara Museum of Natural History, the San Bernardino Museum of Natural History, UCLA and Los Angeles County Museum of Natural History.

Therefore, as previously conditioned, and as amended, the proposed project is consistent with Section 30244 of the Coastal Act. The Commission notes that any additional work not described under this permit shall require review by the Executive Director to determine if an amendment or a new permit would be required.

C. RIGHT OF THE APPLICANT TO SUBMIT THE APPLICATION

Section 30601.5 of the Coastal Act allows a party to apply to the Commission to develop a piece of property over which it is not the owner of a fee interest, without the owner of any superior interest joining as a co-applicant, provided the applicant can demonstrate a legal right to use the property for the development. If the applicant does not own the property, however, the Commission must contact the legal owner and invite it to be a co-applicant.

Section 30601.5 States:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. **In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval. (Emphasis Added)**

Section 13053.5(b) of Title 14 of the California Code of Regulations requires that an applicant for development shall provide documentation of its "legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, [or] authority to acquire the specific property by eminent domain."

Recently in seeking to widen Culver Boulevard¹, the development that occasions this recovery effort, Playa Capital was challenged concerning its right to carry out any development on Area C, which it does not own. Recently Playa Capital has resubmitted an application for the road, 5-01-382 and information that it contends will show that it is legally entitled to carry out the work, requesting that the Commission approve the road that is tied to this recovery plan. With respect to its right to carry out the archaeological recovery, subject to the present permit amendment, the applicant asserts that the archaeological recovery is related to the road and infrastructure work, and within the foot print of that work. Because the recovery is a precondition of constructing the road, the applicant argues that the archaeological exploration is also authorized.

United States Trust Company of California N. A. ("U.S. Trust Company") holds title to the greater part of Area C in trust, for benefit of the State of California. In asserting its right to develop the proposed improvements, Playa Capital provided an easement agreement between its predecessor in interest, Maguire Thomas-Playa Vista, and the U.S. Trust Company. It also provided a letter from the Los Angeles County Department of Public Works granting permission to work on the loop road and on the land within the loop and tax bills for land that was previously owned by the Pacific Electric Railroad. The applicant has also provided an agreement with Caltrans that allows it to encroach on the highway to install the ramps connecting to the Marina Freeway (California Department of Transportation (CALTRANS), Encroachment Permit 798-6MC-0618; Encroachment Permit Rider 700-6RW-2956, November 8, 2000.) To make it easier to understand the location of land owned by the various owners involved, the applicant also provided a map incorporating this information (Exhibits). Finally, both the applicant and the Commission have contacted the U.S. Trust Company and invited it to be a co-applicant, pursuant to Section 30601.5.

The history of the land is as follows. When the previous owner of the property, Howard Hughes, died, his successor in interest, Summa Corporation, and the State agreed that the State would take Area C in lieu of part of the amount due in estate taxes. In a Security Agreement, dated August 29, 1984, and subsequently amended, the State also agreed that the Summa Corporation or its successors could buy back the land for an agreed on sum. In three amendments executed with Summa and successors in interest, which include Playa Capital, the amount was adjusted and the date was extended to December 31, 2000. After that time, the State would no longer be obliged to sell the property back to Summa's successor. However, Summa or its successor would retain a right of first refusal if the property were sold within five years of December 31, 2000. The Security Agreement, and subsequent amendments, gave Maguire Thomas-Playa Vista certain rights to fence, test, maintain and propose development on the Area C property. As the Controller and the public have pointed out, that agreement expired on December 31, 2000. Thus, at this time,

¹ Application 5-00-400(Playa Capital) and appeal A-5-PLV-00-417 (Playa Vista Capital). These two actions were for the identical project, widening Culver Boulevard by 27 feet, adding a ramp at Lincoln Boulevard and widening ramps at Route 90.

Playa Capital no longer has a right to buy the property, but it does retain a right of first refusal if the property were sold within five years of December 31, 2000.

Independent of that agreement, in 1990, the U.S. Trust Company and the developer, Maguire Thomas Partners-Playa Vista, recorded an easement over the property granting Maguire Thomas (Summa's initial successor) or its partners or successors an easement to build certain road and infrastructure improvements. The applicant, Playa Capital Company, LLC, is Maguire Thomas-Playa Vista's successor.

The Commission notes that there is an executed offer to dedicate some of the land necessary to develop the Culver widening project. The applicant has provided documents indicating that on November 4, 1998, Sandee Parks, an executive with US Trust signed an offer to dedicate land necessary for the loop ramp to the City of Los Angeles. Los Angeles County already owns the land inside the existing loop and the loop itself, according to tax records and the Los Angeles County Public Works Department (Exhibit 6.) Some land necessary for the connector ramps to Route 90 are located on former Pacific Electric Railroad right-of-way owned in fee by the applicant. However, the applicant's representative agrees that additional land adjacent to Culver Boulevard, east of the ramp and west of the Marina Freeway that is required to accommodate weaving and transition lanes is not yet offered for dedication. Irrespective of the offers to dedicate, the applicant's right to develop that portion of the project derives from the Easement Agreement.

Completion of the Culver Boulevard project and the associated archaeological recovery, however, will require the use of some land where development of roads and utilities will be dependent on the Easement Agreement.

On May 14, 2001, the State Controller wrote the Commission Chair, stating in part:

"My office is opposed to any roads constructed or expanded on this parcel. As you know, this property is currently being held in trust for the benefit of the State of California. Moreover, efforts are currently underway to transfer the entire 73-acre parcel to the California Department of Parks and Recreation. Given that my office is entrusted with the responsibility and stewardship of this land until such time as we can transfer it to the Department of Parks and Recreation, I am notifying you that any purported consent previously given by my office to the applicant for the purpose of constructing or expanding roads on Area C is hereby withdrawn. Any such consent would have been premised upon Playa Capital exercising its option to purchase the 73 acres in issue. The option expired December 31, 2000, and was not renewed." (See Exhibit 5.)

In asserting its rights to develop the road, the applicant provided documents as listed below.

1. Security agreement regarding Area C between Kenneth Cory, State Controller and Summa Corporation, 1984, with first through fourth amendments.
2. Copy of October 30, 1998 correspondence from Chief Deputy Controller to U.S. Trust Company of California with attached irrevocable offer to dedicate.
3. Easement agreement by and between Maguire Thomas Partners—Playa Vista and U.S. Trust Company, dated August, 30, 1990.
4. Map and conditions of approval, Tentative Tract Number 44668, City of Los Angeles, May 4, 1987.

The applicant asserts that the Easement Agreement survives the termination of the Security Agreement, and the 1990 easement authorizes improvements that are defined in Section I.A.4, Page 3 of the Easement Agreement and Section I.A.6 of the Easement Agreement. (Exhibits 11, 12).

In an August 9, 2001, letter to the Controller, the applicant's attorney, George Muhlstein asserted in part:

"[Y]our May 10th letter regarding Playa Capital's ability to process the Coastal Development Permit applications are unfounded for the following reasons:

- The U.S. Trust Company of California ("USTCC") is the legal owner of Area C. It holds such property for the benefit of the State of California pursuant to and subject to the restrictions set forth in that certain amendment to Declaration of Trust dated December 11, 1984.
- Area C is subject to a recorded easement agreement, dated August 30, 1990 ("Easement Agreement") ... This Easement Agreement, which by its express terms is a perpetual and irrevocable burden on Area C, remains in full force and effect. ...
- Under the Easement Agreement, Playa Capital is entitled to enter upon Area C to plan and construct various roadway and other infrastructure improvements and has the right upon completion of such improvements to request that USTCC execute and deliver irrevocable offers to dedicate such improvements to the City of Los Angeles or other appropriate governmental entities. Playa Capital's rights under the Easement Agreement are not subject to any prior discretionary consent from USTCC, nor is USTCC required to seek the consent or approval of any other person or entity (including the Controller of the State of California) as a condition to Playa Capital's exercise of such rights. In addition, such rights are not subject to or in any respect dependent upon the status of the September 28, 1990 agreement, sometime referred to as the "Area C Option Agreement among the USTCC, MTP-PV and Maguire Thomas Partners-Playa Vista Area C

- On November 4, 1998, USTCC executed an irrevocable offer to dedicate land within Area C for improvements to the Lincoln Culver loop ramp system and the widening of Culver Boulevard. Such offer to dedicate has not been modified or withdrawn and, since it is irrevocable, cannot be.
- USTCC has been advised by Playa Capital, pursuant to Section 30601.5 of the California Coastal Act, that Playa Capital has filed Coastal Permit Application No.'s 5-00-400 and 5-01-107 and an application to amend Coastal Permit No. 5-98-164 with the California Coastal Commission. USTCC has not objected to such proceedings and has declined to participate as a co-applicant therein.

"Further, under the September 28, 1990 agreement between the Controller's office and Playa Capital's predecessor, the Controller's office promised to cooperate with Playa Capital's predecessor in effectuating applications for traffic improvement permits. See Controller's Agreement Art. 1, Section 1.1. The rights under this agreement were assigned to Playa Capital in October 1997. See Controller's Agreement, Art. 5, Section 5.1. ..." (See Exhibit 5 for entire text.)

Section 30601.5 of the Coastal Act provides the following:

"Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as co-applicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval."

Thus, it is not necessary for the Controller's office, as owner of the property, to join as a co-applicant in this application. Indeed, as indicated above, the Controller's office may not even need to approve of the proposal, if the applicant can demonstrate its legal interest in the property.

Again, under Section 30601.5, the applicant must demonstrate a legal right, interest, or other entitlement to use the property for the proposed development. That section also states, in part:

In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

Pursuant to section 13053.5(b), Title 14 of the California Code of Regulations, an applicant must provide: "A description and documentation of the applicant's legal interest in all the

property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain.”

In this case, the Controller's assertion that any approval given for use of the State trust property is revoked has created a dispute regarding the applicant's legal right to carry out the project and/or comply with the required conditions of approval. The applicant's representative has now responded to the Controller's initial assertion, and the Commission finds no basis on which to disagree with that response. In addition Commission staff consulted with the California Attorney General's office and received confirmation of its interpretation of the relevant documents. In sum, the Commission finds that the applicant has provided sufficient evidence of its right to complete the project in compliance with Section 30601.5 of the Coastal Act or Section 13053.5(b) of the Commission's regulations for the Commission to proceed with the processing of the instant application.

In addition, the Commission notes that it has deferred final action on this case for a number of months while the applicant revised its project to address Coastal Act issues. The Commission further notes that in the intervening period there has been progress made on the larger issue raised by the Controller, the issue of reserving a significant additional portion of the Playa Vista property for public use and habitat protection.

D. PUBLIC ACCESS AND RECREATION.

Title to Area C, where this site is located, is held by United States Trust Company of California, N.A. (“U.S. Trust Company”), in trust for the State of California. In 1991, as part of the settlement of the estate of the previous owner, Howard Hughes, the State agreed to transfer Area C to a trustee. It also agreed that the successor to the Hughes real estate interests (Summa Corporation) could re-purchase Area C for a set price, if it purchased the area by December 31, 2000. The set price significantly exceeded the amount that the company owed the State in estate taxes. Subsequently, the present applicant acquired the rest of Playa Vista and the option, but failed to exercise the option to purchase by December 31, 2000, so the option expired. This applicant retains only a second option agreement, which provides the applicant the right to bid against another offer that will expire on December 31, 2005.

Now that the State is no longer obliged to sell the land to the developer, the Controller, who is responsible for managing the State's assets, has suggested that the State retain the site as a public park. While this decision would require an act by the Legislature, the Commission may wish to consider the compatibility of any proposed development with the possible future use of the site as a public park. In this case, all archaeological recovery work would occur in an area that is being considered for widening a road. The recovery work is only necessary if the Commission approves the road widening, finding that the wider road is consistent with the Coastal Act, including its access and recreation policies.

Therefore, the Commission finds that the proposed archaeological recovery work under the subject amendment application may be approved because of the project's consistency with the cultural, land and marine resources protection policies of the Coastal Act. This permit amendment can also be found consistent with the public access and recreation policies of the Coastal Act with the imposition of special conditions 1 and 2. In Special Condition 1, the Commission requires that this archaeological recovery cannot go forward unless the road widening is approved and duly authorized. In Special Condition 2, the Commission limits this recovery effort to the area that will be disturbed by grading for the road.

Another way to examine the consistency of this project with recreational use of the site is to examine the practice of the Department of Parks and Recreation. While the policy of the Department of Parks and Recreation is to leave cultural resources intact, the Department of Parks and Recreation has widened roads within parks when necessary to provide public access to parks. For example in the early 1980's the Commission approved a permit for improved access to Malibu Creek State Park that required archaeological recovery. In that instance, State Parks' archaeologists implemented recovery plans and recovered artifacts exposed during exploration and/or construction. If the Commission does approve the road widening, it can require that work on the road in the vicinity of the archaeological recovery site not commence until this Treatment Plan is completed. Secondly, in Condition 2, the Commission has limited exploration and recovery to the minimum necessary to recover the parts of the site that will be impacted by road building. If the Commission finds that the road is consistent with the Coastal Act, including its recreational policies, and issues the permit, the recovery will be necessary to mitigate for the road and consistent with Section 30244 of the Coastal Act.

E. MARINE RESOURCES.

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of

waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

This project will result in the excavation of as much as 7,650 cubic yards of silty soil. The site is located in a historic estuarine wetland that was isolated from Ballona Creek, its water supply, by the channelization of the creek in the late 1930's and then filled and disturbed during construction of the Marina del Rey. The soils on the site include dredge spoils and soils disposed of legally and illegally in the past.

The drainage from the site will most likely go into the existing roadside ditch that parallels Culver Boulevard, which then flows into the Marina Drain, which is a wetland area, or into Ballona Creek, which is near the site Exhibit 3.) During construction, the applicant indicates that it will follow local and OSHA codes and construction practices, which require shoring of deep excavations and covering and sandbagging of excavated earth. However, the applicant has provided no specifics concerning the direction of expected drainage or the measures that it will take to avoid siltation into these two water bodies. The applicant has not provided information concerning measures that it will take after completing excavation to protect these resources from windblown dust or waterborne soil. The Marina Drain is a narrow ditch that could be easily blocked by soil and silt. In order to avoid deposit of silt into these areas, the Commission requires a complete erosion control plan. Therefore, prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, an erosion control plan and a post-excavation temporary revegetation plan. The plans shall include a written report describing all temporary and permanent erosion control and run-off measures to be installed; a site plan and schedule showing the location and timing of installation of all temporary erosion control measures and all measures planned to reduce erosion after the project is finished.

In the event there is a delay between completion of the excavation and construction of the road, it is important to include measures to stabilize the site during the period of delay or of work stoppage for any other reason. The Commission has addressed this issue in part by requiring the applicant to have all permits and authorizations to construct the road secured before the permit for the archeological treatment plan can issue. Nevertheless, the Commission requires that the applicant provide a plan and agree to control erosion from the site if work stops for any reason and the construction of the road does not then commence. (These requirements are more specifically defined in Special Condition #5).

Many standard erosion control plans use non-native grasses for quick coverage. In this area, which supports some native plants, stands of invasive plants, and some extremely stressed wetlands, seeding with non-native, quick-growing grasses could further disrupt the balance of the area. Vegetative cover shall consist only of native plants found in the area, of the appropriate coastal scrub communities. Finally, after completion of the exploration

the disturbed soils could be inviting to invasive plants. Therefore the Commission is requiring that the applicant undertake to monitor the site and remove non-native plants until construction of the road can begin.

As a result of grading, silt and contaminants deposited on the site could enter wetlands or the ocean. To prevent these occurrences, the applicant is required to 1) install temporary erosion control measures, 2) assure that there be no direct impact on the wetlands or other habitat found elsewhere on the property caused by either the temporary erosion control measures or the proposed archaeological recovery, 3) design measures to prevent erosion of the site that will be compatible with long term restoration goals and that will not encourage further invasion by non-native plants. As conditioned the project will not cause pollution and impair water quality and is consistent with the marine resources and habitat policies of the Coastal Act.

F. LAND RESOURCES HABITAT

The Coastal Act requires the protection of areas of environmentally sensitive habitat and of areas adjacent to them. This particular area is disturbed, and covered with introduced weeds and grasses. Some coastal sage scrub plants occur. Elsewhere on the site there are remnant wetlands, a ditch that some fish and areas dominated by plants that can grow in either wetlands or in disturbed environments. However, the Playa Vista project biological consultant, Dr. Edith Read reports that in October 1995 visiting naturalists observed a population of 30 rare plants, which she identified as the southern tarplant (formerly identified as *Hemizonia australis* but now called *Centromadia parryi* ssp *australis*), on the adjacent escarpment on Area C. The southern tarplant, *Centromadia parryi* ssp *australis* is on list 1b of the California Native Plant Society. Southern Tarplants, according to Dr. Read, favor clay soil depressions that are relatively free of weeds. Dr. Read's initial report showed a very generalized area for the tarplant, which could have indicated overlap between the archaeological site and the area in which tarplant have been observed. Subsequent more detailed map on a larger scale showed that the two areas are at different elevations and are significantly offset. However, the Commission requires that the applicant fence the potential tarplant area with visible hazard fencing and control trucks and staging so that no damage can occur during the archaeological treatment.

This plant is difficult to track because it blooms only a short period each year, and not every year. When it is not blooming, its small spring sprouts or dried leaves and stems are indistinguishable from the leaves and stems of other seasonal annuals. This plant has been mapped in two locations on Area C. Both of the locations are at some distance from this recovery excavation. However to assure that this plant is not disturbed the Commission requires that a biological monitor survey the site prior to the disturbing any vegetation. If the plant is found, the work shall not proceed. A report shall be filed in the Commission office prior to issuance of the permit and again prior to the start of work.

Like all extensive undeveloped sites near significant habitat, this site is used by a number of bird species both rare and common for nesting and feeding. Therefore the Commission requires that the biological monitor also survey for nesting birds and that no work take place in the immediate area of such birds until the hatchlings fledge.

Finally, the Commission notes that this site is adjacent to a Los Angeles County Significant Ecological Area number 29 Ballona wetlands. The SEA and most of the sensitive species, with the exception of the southern tar plant, are located on the north side of Culver Boulevard, the road widening and this archaeological recovery will be located on the south side of Culver Boulevard. While this particular area of the site is no longer a wetland, it is only a few hundred yard from the creek and the present wetlands. The wetlands and the adjacent creeks and lagoons provide food for shore birds and seabirds, including the endangered Least tern and California Brown Pelican. Pelicans have been observed on the edges of the site, but not in this location. Instead the pelicans prefer the creek for feeding, and docks in the nearby Marina del Rey for loafing. The Least tern feeds in Ballona Creek and nests on nearby beaches. Belding's Savannah sparrows have been observed in Area C near patches of pickleweed located on the (north) side of Culver Boulevard, although no one has confirmed that they have nested there in at least twenty years.

As conditioned, to avoid the southern tarplant to avoid disturbance of nesting birds, and to avoid siltation as described in the preceding section, this project is consistent with the requirements of Sections 30240 and 30251 of the Coastal Act.

G. LOCAL COASTAL PROGRAM

Coastal Act Section 30600 states in part:

(a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

On December 9, 1986, the Commission certified, with suggested modifications, the Land Use Plan portion of the Playa Vista segment of the City of Los Angeles Local Coastal Program. The certified LUP contains policies to guide the types, locations and intensity of future development in the Playa Vista area. The LUP designated most of Playa Vista for intense urban development, reserving 175.36 acres as wetland, and additional areas for buffers, dunes and interpretive habitat purposes. The Habitat Management Area, including what was identified as "all wetlands," "all necessary buffer areas" and "necessary ecological

support areas” and an interpretive center totaled 209 acres. Area C was designated for urban development, and no habitat areas were to be preserved in Area C:

AREA/USE	Hotel rooms	Boat slips acres	Commercial sq. ft.	Residential units	Habitat acres	Office sq. ft.
Playa Vista Area A	1,800	46 Acres	200,000	1,226	0	
Playa Vista Area B			70,000	2,333	209 A	
Playa Vista Area C			150,000	2,032	0	900,000

The certified LUP contains a chapter that addresses cultural heritage resources. The policies of the certified LUP require that the City:

4b.1 Review potential resource impacts [on archaeological and heritage resources] through the County and City’s Environmental Guidelines and require appropriate environmental documentation and reasonable mitigation measures as determined by the Department of City Planning and the State Historic Preservation Office SHPO.

4b.2 Where feasible, as defined by Section 30108 of the Coastal Act, resources found in the wetland preserve area should be maintained intact and protected from disturbance.

4b.3 Where feasible, as defined by Section 30108 of the Coastal Act, any resources found in the portions of the Local Coastal Program study area planned for development should be collected and maintained at the interpretive center planned at the wetland preserve, or at the Los Angeles County Natural History Museum.

4b. 4 To ensure proper surface and site recordation, the State Historic Preservation Office shall be notified, along with the City Planning Director if any resource is discovered during any phase of development or construction.

This project has been reviewed by SHPO and is required to mitigate a project required in the certified Land Use Plan for Playa Vista. Thee fore the project as proposed is consistent with the certified land use plan and will not prejudice the development of a local coastal program that is consistent with the coastal act with respect to archaeology.

The Commission notes that the road widening that is mitigated in this action is envisioned in the certified Land Use Plan. Further the actual work less extensive than authorized in the certified Land Use Plan -- adding one lane to Culver Boulevard, while the certified Land Use Plan envisioned adding six lanes to Culver Boulevard between Lincoln Boulevard and Route

90. In other related reports,² the Commission has reviewed the history of road widening authorized in the certified Marina del Rey/Ballona and Playa Vista Land Use plans.

The Commission notes that the standard of review for any project reviewed when only a Land Use Plan is not the Land Use Plan but the policies of Chapter 3 of the Coastal Act. In addition, the Commission must also consider whether, if revisits the Land Use Plan, its approval of the project will reduce its alternatives in approving a new Land use Plan that incorporates changed circumstances and current interpretations of the Coastal Act. In this case, this analysis is appropriately made when the Commission analyzes the road widening now before it as a related matter. If the Commission determines that it can approve the road without reducing its other choices for development of Area C, the archaeological treatment naturally follows as mitigation for the road.

The archaeological investigation consistent with the certified Land Use Plan and the road that requires it is also consistent with Chapter 3. Approval of this archeological treatment plan now will not reduce the Commission's ability to consider alternative levels, kinds and configurations of development if and when it revisits the certified Land Use Plan.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

One alternative is denial of the project. Leaving the resource intact is the preferred alternative if no further disturbance is planned or authorized. However, there is a possibility that the Commission may approve a road widening in this location. If the road is widened, the site will be obliterated. Therefore, if the road widening is approved, the applicant must mitigate the damage to the site and the Commission must consider and require the mitigation for the damage to the site. The Commission has required that if no road is approved or likely to be built, the recovery shall not take place, and that the permit for the archaeology shall not issue until the road widening permit is approved and issued.

In the case of archaeology investigations, the Commission is required to examine and consider the judgement of SHPO. In this case, SHPO has reviewed the recovery plan. Rejection of the recovery plan or a redesign of the recovery plan would be inconsistent with

² 5-01-038 Caltrans; 5-01-184 (Caltrans), 5-01-382 and A-5-PLV-417(Playa Capital) and 5-01-223 and A-5-PLV-01-281 (Playa Capital).

the judgement and opinion of SHPO. The Commission in its initial approval considered approving the project without requiring curation. However, the purpose of archaeological recovery is to preserve and analyze deposits that might otherwise be destroyed. Without curation, such analysis will not take place.

The Commission has considered approving the present work without siltation or erosion control conditions, but finds that without such conditions there is a possibility that local water bodies, such as the Marina Drain, may suffer from siltation. The Commission has examined the possibility that siltation will take place if construction begins and then the completion of the road project is delayed. The Commission has required that the site be stabilized and seeded no more than one month after completion of the treatment or sooner the road widening is delayed.

Finally, the Commission has examined the likelihood that the archaeology excavation will impinge on the site of the southern tarplant, *Centromadia parryi* ssp *australis*, a plant found on the California Native Plant society list 1b. The Commission has considered the type of plants used prevent erosion with the long-term use of the area as habitat. The Commission has also considered the vulnerability of the site to additional invasive plants. It determined that without control of site disturbance and siltation, and without controlling introduced or invasive plants to prevent erosion, the development may disrupt the habitat value of an already stressed and damaged site. The Commission therefore imposed conditions to protect the tarplant and to reduce, avoid or mitigate impacts from site disturbance and siltation.

The Commission has noted that the site is adjacent to the area that is habitat to endangered seabirds, including the California brown pelican and the least tern. The Commission notes that neither the tern nor the pelican are reported using the upland areas of the site. However, they are observed feeding in Ballona Creek and in the case of pelicans, loafing on docks, ropes and bollards adjacent to the Creek. The Commission has considered impacts to marine resources and to sea birds depending on the marine and estuarine habitat and has imposed conditions to control siltation so that the food source of these animals is protected.

Finally, the Commission notes that the recovery is a required mitigation measure under an approved EIR. While its status of a mitigation measure alone does not enhance or reduce the development's consistency with the Coastal Act, it does indicate that the project has been examined by others, including in this instance SHPO and the ACOE. There are no other feasible alternatives or mitigation measures available, which will lessen any significant adverse impact the activity, would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

